Supreme Court, U. S.
FILED
JAN 11 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No 76-1063

STANLEY V. TUCKER,

Petitioner

-v-

HARTFORD NATIONAL BANK & TRUST CO

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

STANLEY V. TUCKER
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HARTFORD NATIONAL BANK & TRUST CO

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

Petitionrr prays that a Writ of Certiorari issue to review the judgment of the Connecticut Supreme Court made October 6th, 1976 and stayed by Chief Justice House and entered October 13th, 1976 at 4: 15 pm.

CITATIONS TO OPINIONS BELOW

The opinion of the Conn. Supreme Court

is printed in the Appendix, infra A-1, and endorsed thereon is the time of entry on the docket. The order of Chief Justice House granting a Stay is printed in the Appendix, infra A-2. Clerks notice of the orders appealed to the Connecticut Supreme Court is printed in the Appendix A-3. The Memorandum of Decision of the Litchfield Superior Court of May 8th, 1976 which abated the action in the lower court is printed in the Appendix A-4. Motions and orders appealed are Appendix A-5 A-6.

JURISDICTION

The judgment of the Connecticut Supreme Court was entered October 13th, 1976 as shown by the file stamping on A-1. The jurisdiction of this Court is invoked under Title 28 USC 1257 (3).

QUESTIONS PRESENTED

1. Where Appellant claims he had been deprived under color of state law, of property without procedural due process or equal protection of the laWs is a substantial federal question raised?

3. Where billions of dollars of real property is being foreclosed in Connecticut yearly without procedural due process should not this Court grant certiorari to review the deprivation of fundamentally federally guaranteed rights?

3. Where the appointment of "rent receivers" is carried out on motion without grounds being set out in the motion or at hearing is this not an "independent proceeding" warranting review on appeal?

4. Does Connecticut's Receivership statute GS 52-504 violate the minimum requirments set out by this Court in its decision in Fuentes v Shevlin 407 US 67

5. Does the lack of any standards in G.S. 52-504 permit its wanton use for carrying out fraudulent seizures without due process of billions of dollars of real estate in Conn. by "fat cat" predatory banks?

6. Is a pre-judgment appointment of rent receiver ppealable under GS 52-278 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. This case involves a denial of procedural due process and equal protection of the laws, the fifth and fourteenth amendments to the U. S. Constitution.

2. This case involves the Connecticut General Statute 52-504, challenged as void and unconstitutional as set forth in Appendix A-7.

3.. This case involves the jurisdictional statute G. S. 52-278 1 defining as an "appealable" order any order granting a

Pre-Judgment Remedy G.S. 52-278 1 is set forth on Page 14 infra.

STATEMENT OF THE CASE

This action challenges the constitutionality of Conn G. S. 52-504 permitting the seizure of private property under color of state law and without procedural due process and without the constitutional safeguards mandated by recent civil rights decisions.

Pursuant to the statute complained of herein:

1. Plaintiff seized private property owned by Defendant without any justification in law or equity.

Plaintiff proceeded by bad faith mismanagement to cause losses of about $24,000 in rental income over a six month period.

3. Plaintiff, classed as a predatory "fat cat" bank, then used the bad faith losses it created to claim a "default" on the mortgage.

4. Without a "probable cause" hearing and without any cause given (See A-6)) in violation of Conn Pre-Judgment Remedy Act, GS 52-278 a-b-c-d-e-f-g Plaintiff applied for and received an order for a rent receiver.

5. At the Time Plaintiff commenced its contested and illegal "rent receivership" the Defendant had been fully paid up for ten years on mortgage payments, insurance and taxes were paid in accordance with a monthly payment plan held with an independent Tax Collector, SubContractor to the City pursuant to Special Legislative Enabling Acts.

FACTUAL BACKGROUND OF CONSTITUTIONAL LITIGATION IN CONNECTICUT OVER PROCEDURAL DUE PROCESS

In May 1970 plagued with unconscionable attachments made without notice or hearing arising from a fire in a building under construction this Petitioner filed his first suit in the UNITED STATES DISTRICT COURT - CONNECTICUT challenging on constitutional grounds attachment statute, G.S. 52-279 as it then existed.

The action was dismissed by the District Court and dismissal upheld by the Second Circuit Court of Appeals and This Court granted Certiorari, Tucker v Maher, 405 US 1052.

On remand hearing was held before a Three-Judge District Court and three days after hearing before decision was rendered former Governor Meskill signed into law the Legislative by-product of this litigation,

namely, PA 73-431 now GS 52-278 a b c d e f g.

This present Petition falls squarely with in the factual and constitutional confines of former Petition, granted in Tucker v Maher, supra, and within the confines of a all important actions upheld by This Court in recent years upholding challenges on constitutional grounds to statutes that permit the impounding of private property without procedural due process and without minimum constitutional safeguards.

It is called to the attention of This Court that Rent Receiverships granted in large volumes under similar conditions in Connecticut State Courts today are in total violation of P. A. 73-431 prohibiting all pre-judgment remedies (except temporary restraining orders) without prevailing on a probable cause hearing on notice.

Because of severe inflation coupled

with lack of ready financing Billions of Dollars in real estate in being foreclosed at an increasing rate in Connecticut all in violation of the Constitution and the Amendments thereto.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH U.S. SUPREME COURT DECISIONS

The primary thrust of Appellant's challenge to the constitutionality of Conn. G. S. 52-504 stems from Snaidach v Family Finance 395 US 337 (1969) and its follow on cases. The substantial federal question raised in this Petition is identical to the Snaidach federal question.

A-1 THE DECISION CONFLICTS WITH SNAIDACH

The Connecticut Supreme Court amply brief ed on oral arguments as to conflicts with the Bre-judgmemt Remedy Act, PA 73-431,

and with leading decisions of this Court, especially Fuentes v Shevlin, supra, wherein the special conditions were clearly delineated as to when a pre-judgment remedy may be granted without the procedural due process by its decision dismissing Petitioners appeal, impliedly denied all of his constitutional argument and all of his federal questions at issue herein.

Snaidach at P 339 : "Such summary procedure may well meet the requirments of due process in extraordinary situations. C f, Fahey v Mallone 332 US 245, 253-254, Ewing v Mytinger & Casselbery, Ins. 339 US 594, 598-600; Ownby v Morgan 256 US 94, 110-112, Coffin Bros v Bennett 277 U S 29, 31. But the present case presented no situations requiring special pro tection to a state or to a cre-

ditor is presented by the facts; nor is the Wisconsin statute narrowly drawn to meet any such unusual conditions"

The words of wisom quoted above from Snaidach, supra are most pertinent to the comp laint levied herein at Conn G. S. 52-504 which by its total lack of standards and loosly drawn content permits bad faith or fraudulent creditor actions in violation of the U. S. constitution and the amendments to seize with predatory intent Billions of dollars in Connecticut real estate.

A-2 THE DECISION CONFLICTS WITH BODDIE

The principle expressed in Boddie v Conn. 91 S Ct 780, is that ABSENT A COMPELLING COUNTERVAILING STATE INTEREST OF OVERRIDING SIGNIFICANCE, persons must be given a meaningful opportunity to be heard.

Boddie, supra at P 785: "This Court voiced the doctrine that wherever one is assailed in his person or his property there he may defend."

This compelling doctrine is violated ruthlessly by large banks and / or lending institutions that seek to use unfair means to deprive citizens of Connecticut of a fair hearing soley for purposes of depreciating real property so that large equities can be illegally seized in violation of the Constitution and the Amendments by appointment of a hand picked "Rent Receiver" who works to put through a "strict" foreclosure whereby the Bank can seize the entire equity of the Debtor without payment of a single penny.

It is difficult to describe conditions more obnoxious to the U. S. Constitution and the Amendments thereto. Certainly none of the leading civil rights cases in recent decades wherein this Court upheld due process and equal protection challenges to state statutory schemes permitting impounding of

private property without procedural due process are as repugnant as the actions complained of herein.

II. THE DECISION OF THE SUPREME COURT OF CONNECTICUT DISMISSING PETITIONERS APPEAL VIOLATES THE STATUTE G S 52-278 1 MAKING ALL PRE-JUDGMENT ORDERS APPEALABLE.

In this action the state court order made in the Superior Court of Litchfield appointing a Rent Receiver and granting a motion to Amend the Return was promptly and timely appealed to the Connecticut Supreme Court, This appeal was taken pursuant to the Pre-Judgment Remedy Act, PA 73-431 adopted May 30th, 1973 only days after this Petitioner had appeared before a Three-Judge District Court on remand from the UNITED STATES SUPREME COURT in Tucker v Maher, 405 US 1052, where this Petitioners prior challenge to similar deficiencies in Conn. attachment statutes had been upheld.

The Pre-Judgment Remedy Act was amended by the Connecticut Legislature on June 2, 1976 to specifically make orders, like the one on appeal herein, final for purposes of appeal. PA 76-401 Sec 4 (now GS 52-278 1) :

> "(a) An order granting or denying a pre-judgment remedy....shall be deemed a final judgment for purposes of appeal."
>
> note - underline added.

CONCLUSION

This Petitioner expresses gratitude for him self and for all Connecticut citizens for former granting of Certiorari in Tucker v Maher, 405 US 1052, and asks This Honorable Court once more on this identical challenge on the strength of GS 52-278 1 to grant cer-certiorari and to summarily remand for further proceedings.

RESPECFULLY SUBMITTED:

STANLEY V. TUCKER/
PETITIONER

No 25961

HARTFORD NATIONAL BANK & TRUST CO

-v-

STANLEY V. TUCKER, ET AL

October 6, 1976

The Plaintiff's motion to dismiss the appeal from the Superior Court in Litchfield County is granted.

By the Court

House
Chief Justice

FILED
OCT 13 A 8:45 '76

ORDER CONCERNING STAY

The motion by Stanley V. Tucker "For Stay of Proceedings Pending Petition for Certiorari" dated October 18, 1976, to enable the movant to apply for and obtain a writ of certiorari is denied as it seems clear that no substantial federal question is raised by the order of this court dismissing his appeal as one not taken from a final judgment.

Any proceedings to enforce or carry out the judgment of this court are suspended, however, until November 15, 1976, in order to allow the movant an opportunity to apply for a stay to a Justice of the Supreme Court of the United States. See rule 27 of the United States Supreme Court rules.

By the Court,

House
Chief Justice

FILED
NOV 5 11 56 AM '76
SUPERIOR COURT
OFFICE OF THE CLERK
LITCHFIELD

OFFICE OF THE CLERK
SUPERIOR COURT FOR LITCHFIELD COUNTY
LITCHFIELD CONN.

August 18, 1976

Re: 02 57 61 HNB & T CO v Tucker et al

Gentlemen:

Judge Martin has returned the above file with the following notations:

(Plaintiff's) Motion to Amend Return
Granted

(Plaintiff's) Motion to appoint Receiver of Rents
Granted
Appointed: Attorney E. MANASSEE
Torrington, Conn

Bond $5,000

Very truly yours

s/

PAUL F. BROWN

No 25761 :

HNB & T CO : Superior Court

v : Litchfield County

Stanley V. Tucker et al : May 8th, 1976

Memorandum of Decision on
Plea in Abatement of Defendant Tucker

This is an action for the foreclosure of a mortgage and for other relief. The defendant, Tucker, has filed a Plea in Abatement based on three grounds. At the hearing on the plea in abatement Tucker has apparently pressed only the first ground which alleges "defective service by Sheriff in that return shows service at 963 Capitol Ave, Hartford, a 14 family building, and defendant resides and maintains his abode not at 963 Capitol Ave but in Apt B 4 thereof." As to the second and third grounds of the Plea in abatement, they are therefore overruled.

The Sheriff's return recites that service was made on the defendant Tucker at

the usual place of abode in said Hartford at 963 Capitol Ave.

Testimony at the hearing on the plea in abatement discloses, and the court finds, that 963 Capitol Ave is an apartment building consisting of 14 apartments on three floors; and that the Sheriff actually made abode service on the Defendant Tucker at his usual place of abode at Apt B 4 of 963 Capitol Ave, Hartford. If the plaintiff had, prior to the hearing on the plea in abatement, amended the Sheriff's return so as to show that service had been made at Apt B 4, 963 Capitol Ave, Hartford, this plea in abatement would have been overruled in toto. Although the plaintiff has submitted an affidavit by the Sheriff reciting that he made service on the defendant Tucker at Apt B4, 963 Capitol Ave, that is not sufficient to constitute an amended return by the Sheriff.

The Sheriff's return showing service on the Defendant Tucker at 963 Capitol Ave, Hartford is defective. Rodney v Rodney, 29 Conn Sup 92; and the plea in abatement is sustained on the first ground, it is overruled on the second and third grounds.

It would appaar that if the plaintiff moves to amend the Sheriff's return so as to show proper abode service on the defendant Tucker at Apt B 4, 963 Capitol Ave, Hartford under G.S. 52-125 of the statutes, sicch amendment would receive favorable consideration from the court.

s/

BRACKEN J.

File Stamped

May 14th, 1976

No 25761 : Superior Court
HNB & T CO : Litchfield County

-v- : June 4th, 1976

STANLEY V. TUCKER

MOTION TO AMEND RETURN

Plaintiff restfully moves this Court for permission to amend Sheriffs return to show proper abode service pursuant to G.S. 52-125.

PLAINTIFF, HNB & T CO

O R D E R

The above motion having been heard it is hereby granted / denied as follows:

THE COURT

8/13/76

s/ GRANTED

MARTIN J.

No 25761 : Superior Court

HNB & T Co : Litchfield County

-v- : March 9, 1976

STANLEY V. TUCKER :

MOTION FOR APPOINTMENT OF RECEIVER OF RENTS

The plaintiff in the above action respectfully moves this Court to appoint a receiver of rents.

PLAINTIFF HNB & T CO

O R D E R

Granted

8/13/76

s/

MARTIN J.

G. S. 52-504 Complained of As Unconstitutional

§ 52-504. Application for receiver; orders of judge

When any action is brought to or pending in any court of equitable jurisdiction in which an application is made for the appointment of a receiver, any judge of such court or of the superior court, when such court is not in session, after due notice given, may make such order in the premises as the exigencies of the case may require, and may, from time to time, rescind and modify the same, and shall cause his proceedings to be certified to the court in which the action may be pending, at its next session. (1949 Rev., § 8240.)